

SENATE BILL NO. 45

INTRODUCED BY D. MCGEE

BY REQUEST OF THE PUBLIC DEFENDER COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN EVIDENCE TO BE DISCLOSED TO AN INDIGENT CRIMINAL DEFENDANT WITHOUT COST TO THE DEFENDANT; AND AMENDING SECTION 46-15-322, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-15-322, MCA, is amended to read:

"46-15-322. Disclosure by prosecution. (1) ~~(A) Upon request, When, pursuant to 47-1-111, a defendant has been determined by the office of state public defender to be indigent~~ UPON REQUEST, the prosecutor shall make available to the defendant for examination and reproduction, ~~without cost to the defendant,~~ the following material and information within the prosecutor's possession or control:

~~(a)(i)~~ (i) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;

~~(b)(ii)~~ (ii) all written or oral statements of the defendant and of any person who will be tried with the defendant;

~~(c)(iii)~~ (iii) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

~~(d)(iv)~~ (iv) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

~~(e)(v)~~ (v) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(B) WHEN, PURSUANT TO 47-1-111, A DEFENDANT HAS BEEN DETERMINED BY THE OFFICE OF STATE PUBLIC DEFENDER TO BE INDIGENT, THE PROSECUTOR SHALL, WITHOUT COST TO THE DEFENDANT OR TO THE OFFICE OF STATE PUBLIC DEFENDER, MAKE AVAILABLE THE MATERIAL AND INFORMATION REQUIRED UNDER SUBSECTION (1)(A).

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant

1 for examination and reproduction, any written or recorded material or information within the prosecutor's control
2 regarding:

3 (a) whether there has been any electronic surveillance of any conversations to which the defendant was
4 a party;

5 (b) whether an investigative subpoena has been executed in connection with the case; and

6 (c) whether the case has involved an informant and, if so, the informant's identity if the defendant is
7 entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

8 (3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning
9 chain of custody, to protect physical evidence produced under subsection (1)(d).

10 (4) The prosecutor's obligation of disclosure extends to material and information in the possession or
11 control of members of the prosecutor's staff and of any other persons who have participated in the investigation
12 or evaluation of the case.

13 (5) Upon motion showing that the defendant has substantial need in the preparation of the case for
14 additional material or information not otherwise provided for and that the defendant is unable, without undue
15 hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person
16 to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate
17 or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to
18 prepare or disclose summaries of witnesses' testimony.

19 (6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the
20 court may for good cause permit, together with their statements, a list of the names and addresses of all persons
21 whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi,
22 compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the defendant did not
23 have a particular state of mind that is an element of the offense charged."

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